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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. JOLEEN MAE LAVERGNE, Defendant and Appellant.	B289080 (Los Angeles County Super. Ct. No. VA138418)

APPEAL from a judgment of the Superior Court of Los Angeles County, Yvonne T. Sanchez and Roger T. Ito, Judges. Affirmed.

Elizabeth H. Eng, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn Webb and Nancy Lii Ladner, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted appellant Joleen Mae Lavergne of selling, transporting, or offering to sell a controlled substance (codeine) (Health & Saf. Code, § 11352, subd. (a); count 1) and she pleaded no contest to possessing methamphetamine (*id.*, § 11377; count 2) and possessing a methamphetamine pipe (*id.*, § 11364; count 3). She claims the trial court erroneously (1) conditioned giving an entrapment instruction on the admission of evidence she possessed the pipe and methamphetamine, (2) denied her motion to dismiss the charges based on a violation of her right to a speedy trial, and (3) denied her Penal Code section 1538.5 motion to suppress the pipe and methamphetamine on the ground the warrantless searches of Lavergne's vehicle were unlawful.

Although we conclude the trial court erred in conditioning allowing Lavergne to make an entrapment defense upon admission of her possession of methamphetamine and the pipe, we conclude that error was not prejudicial. We also reject Lavergne's other challenges to the judgment and thus affirm.

DISCUSSION

I. The Evidence Lavergne Possessed the Pipe and Methamphetamine Was Irrelevant to Her Entrapment Defense

A. *Factual and Procedural Background*

1. *The People's Evidence Initially Presented to the Jury*

In early December 2014, Los Angeles County Sheriff's Department Detective Tom Logrecco, a narcotics detective, posted an ad in Craigslist. The ad stated: "Need help—$5 (Whittier)

[¶] Looking for pain relief, lost insurance, almost done with script,[1] in [W]hittier area, please text [phone number]."

Logrecco testified that he commonly posted such ads. He was not targeting Lavergne, but "put out this bait" to see "who would bite[.]" Soliciting narcotics for pain relief would probably generate more sympathy than soliciting them for "partying." He did not identify himself as a police officer in the ad.

On January 12, 2015, Logrecco received a responsive text message at his phone number from another phone number. A text exchange began between Logrecco, who was working undercover, and a person (later identified as Lavergne), and the exchange continued perhaps "a couple days." Part of the exchange (reflected in People's exhibit No. 2, admitted in evidence) was as follows:

"[Lavergne:] Have Tylen/Cod #3.

"[Logrecco:] Hello [I] am [interested.] [I] drive a truck[;] coming back to LA as we speak[.] [B]e back tomorrow[.] [W]here are [you] located and how much?

"[Lavergne:] I am in Anaheim, have 23 of them. [$]3.00 each[.] [¶] I also have Soma." Logrecco understood the message to convey that Lavergne had 23 Tylenol codeine No. 3 pills for $3.00 each.

Logrecco did not immediately respond to the message and, after a period, Lavergne asked, "Did you want any?" Logrecco replied he was interested in the pills but asked if Lavergne could meet him in La Mirada because Logrecco was at work. Lavergne said she was close, that is, at Beach and Stage.

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1 Logrecco testified "almost done with script" meant he had a prescription for pain medication.

Logrecco again did not immediately respond and, after a period, Lavergne said, "Well I take it you don't want them or you are a Cop." Logrecco denied he was a cop, indicated he had been sent on a work-related errand, asked Lavergne if she was still near Beach and Stage, and confirmed Logrecco wanted the pills. Lavergne replied she was near Beach and Stage. Logrecco asked if they could meet in an hour, and Lavergne indicated she had "to meet before 2 [p.m]."

Logrecco responded that that arrangement would be no problem and asked how many pills Lavergne had left. Lavergne replied 23. Logrecco said he would pay $70 dollars and he was then leaving Santa Fe Springs. He asked if the two could meet at a car wash at Stage and Alondra; he stated that he was driving a white F150 with Garcia Trucking on its doors, and that he was almost there. Lavergne asked if Logrecco could come to Beach and how far Stage and Alondra is from Beach and Stage. Logrecco responded Stage and Alondra was a half-mile away.

Lavergne said that she had to be at Euclid and Commonwealth at "2 [p.m]." Logrecco told Lavergne to come quickly to the corner of Stage and Alondra where a 7-Eleven store was located. Lavergne asked Logrecco's location and said she was turning onto Stage. Logrecco asked, "What car[?]" Logrecco was driving a black F150.

Lavergne did not answer when Logrecco asked, "What car[?]" Logrecco called Lavergne. She answered and Logrecco asked what car she was in. She replied she was in a black Tahoe.

Logrecco subsequently arrived at the 7-Eleven in La Mirada and saw the black Tahoe parked in a parking stall. He parked at the other end of the parking lot. The Tahoe drove up

alongside Logrecco's truck. Once Logrecco's partners arrived, he exited his truck.

Logrecco approached the driver's side of the Tahoe and saw Lavergne, the Tahoe's sole occupant, in the driver's seat. As Logrecco approached, he saw a plastic, unlabeled pill bottle between Lavergne's right leg and the center console. Logrecco, in plainclothes, identified himself, displayed his badge, and began talking to Lavergne. He asked her to give him the pills. Lavergne gave him the bottle. Logrecco looked inside the bottle and saw 23 pills with the number three inscribed on them. A criminalist tested one pill and determined that it contained codeine. The People later rested.

2. *Lavergne's Request for an Instruction on Entrapment and the People's Request To Reopen their Case*

Outside the presence of the jury, Lavergne asked for an entrapment instruction and suggested that she might testify. During an extended colloquy, including a discussion of *People v. Barraza* (1979) 23 Cal.3d 675 (*Barraza*) and *People v. Allison* (1981) 120 Cal.App.3d 264 (*Allison*), the court (Judge Roger T. Ito) advised that if Lavergne presented entrapment testimony, the court would give an entrapment instruction after allowing the People to reopen to present evidence she possessed a methamphetamine pipe and methamphetamine. The court indicated *Barraza* and *Allison* allowed admission of the evidence as relevant to the issue of whether entrapment had been established.

Lavergne objected that *Barraza* barred admission of the possession evidence but she indicated she wanted an entrapment

instruction. Over Lavergne's objection, the court granted the People's request to reopen their case.

3. *People's Evidence Following Reopening*

Logrecco testified that Lavergne told him the pills in the bottle were the ones she was going to sell to him. Logrecco searched her vehicle and found a glass pipe used to smoke methamphetamine. He observed residue inside the pipe. Logrecco asked Lavergne if the vehicle contained methamphetamine.[2] She said methamphetamine was "inside a marker." Logrecco searched the vehicle again. He found the marker and, inside it, there was a plastic bag containing a white crystalline substance he believed was methamphetamine. Lavergne told Logrecco she was selling him the pills because she needed gas and was living out of her vehicle.

4. *Defense Evidence*

In her defense, Lavergne testified that in January 2015, she saw the ad. At the time, she lived out of her vehicle. The author of the ad said something to the effect he was a truck driver[3] in pain and his prescription was running out. Lavergne

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[2] Logrecco told Lavergne to be honest and tell him if she had methamphetamine in the vehicle. He told her that if she told him "where the methamphetamine was, it would be a misdemeanor." However, utilizing a ruse, he falsely told her that if he had to summon deputies to his location, "it would become a felony." He mentioned "the felony part" in the hope she would tell him where the methamphetamine was.

[3] Lavergne later acknowledged the ad's author did not say he was a truck driver.

felt compassion for the author of the ad and contacted him for that reason. If she had not felt sympathy for the author, she would not have "sold" him the pills. While Lavergne testified on direct examination that she was trying to help a person who had lost his insurance, at the scene she told Logrecco she was trying to get gas money. Lavergne did not think she told Logrecco she had been acting out of compassion, but she did not recall.

Lavergne sent the author a text message offering to sell him the pills. She knew it was a bad choice. She had obtained the pills from her dentist in the 1990's. The message responses in People's exhibit No. 2 were hers. In the messages, she asked if the person was a "cop" because she "knew that it was illegal." She felt better after the person said he was not a cop, but her doubts remained. Given the second thoughts, she did not know why she still agreed to meet.

Lavergne actually drove a black Tahoe but, because she was having second thoughts, she sent to Logrecco a message indicating she was in a white Honda.[4] She never spoke to Logrecco on the phone. When Logrecco approached her in her vehicle at the 7-Eleven, he identified himself and she handed him the pills. She was using methamphetamine, but that had nothing to do with why she agreed to sell the pills to Logrecco. Lavergne lied to Logrecco, telling him she had obtained the pills from a friend. Logrecco found a pipe and methamphetamine in Lavergne's Tahoe.[5]

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[4] People's exhibit No. 2 contains no message indicating Lavergne was in a white Honda.

[5] During the final charge, the court gave an entrapment instruction (CALCRIM No. 3408).

B. *Analysis*

Lavergne claims the evidence that she possessed the pipe and methamphetamine was irrelevant and inadmissible under *Barraza*, and the trial court abused its discretion by admitting the evidence as a condition to instructing the jury on entrapment. Therefore, Lavergne claims, her conviction on count 1 of selling, transporting, or offering to sell a controlled substance must be reversed. We disagree.

1. *Applicable Law*

In *Barraza*, the Supreme Court held "that the proper test of entrapment in California is the following: was the conduct of the law enforcement agent likely to induce a normally law-abiding person to commit the offense? For the purposes of this test, we presume that such a person would normally resist the temptation to commit a crime presented by the simple opportunity to act unlawfully. Official conduct that does no more than offer that opportunity to the suspect—for example, a decoy program—is therefore permissible; but it is impermissible for the police or their agents to pressure the suspect by overbearing conduct such as badgering, cajoling, importuning, or other affirmative acts likely to induce a normally law-abiding person to commit the crime." (*Barraza*, *supra*, 23 Cal.3d at pp. 689-690.)

Barraza offered two guiding principles. The first was: "[I]f the actions of the law enforcement agent would generate in a normally law-abiding person a motive for the crime other than ordinary criminal intent, entrapment will be established. An example of such conduct would be an appeal by the police that would induce such a person to commit the act because of . . . sympathy, instead of a desire for personal gain or other typical

criminal purpose." (*Barraza*, *supra*, 23 Cal.3d at p. 690.) The second guiding principle focused on whether police conduct made commission of the crime "unusually attractive."[6] (*Ibid*.)

The court added: "Finally, while the inquiry must focus primarily on the conduct of the law enforcement agent, that conduct is not to be viewed in a vacuum; it should also be judged by the effect it would have on a normally law-abiding person situated in the circumstances of the case at hand. Among the circumstances that may be relevant for this purpose, for example, are the transactions preceding the offense, the suspect's response to the inducements of the officer, the gravity of the crime, and the difficulty of detecting instances of its commission. [Citation.] We reiterate, however, that under this test such matters as the character of the suspect, his predisposition to commit the offense, and his subjective intent are irrelevant." (*Barraza*, *supra,* 23 Cal.3d at pp. 690-691, fn. omitted.)

In *Allison*, a jury convicted the defendant of selling or offering to sell cocaine. (*Allison*, *supra*, 120 Cal.App.3d at p. 268.) At the commencement of trial, the defendant told the court she was willing to stipulate to the elements of the offense and she would rely only on an entrapment defense. She argued incriminating statements she allegedly made to narcotics officers that suggested she had been involved in past illegal drug

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[6] The second guiding principle was that "affirmative police conduct that would make commission of the crime unusually attractive to a normally law-abiding person will likewise constitute entrapment. Such conduct would include, for example, a guarantee that the act is not illegal or the offense will go undetected, an offer of exorbitant consideration, or any similar enticement." (*Barraza*, *supra,* 23 Cal.3d at p. 690.)

activities similar to the installment sale of cocaine that was before the trial court, and would not abscond with the officers' money without providing the cocaine were inadmissible. She asserted, inter alia, (1) the statements tended only to establish she was a bad person, and (2) in light of the offered stipulation, the statements were irrelevant to the issue of entrapment. The trial court declined to exclude the statements. (*Id.* at pp. 269, 272.)

On appeal, the *Allison* court concluded that no violation of *Barraza's* entrapment rules had occurred. (*Allison*, *supra*, 120 Cal.App.3d at p. 274.) The court stated, "it is apparent that [the] defendant's references to her past [involvements with narcotics] were made contemporaneously with and were an integral part of the negotiations leading to the sale of cocaine to the two narcotics agents. . . . [¶] . . . [T]he statements which [the] defendant sought to exclude were all made for the obvious purpose of inducing the agents to go ahead with the cocaine purchase. . . . These statements, showing as they did [the] defendant's *willing and active participation* in the drug transaction for which she was on trial, were admissible on the issue of entrapment." (*Id.* at pp. 274-275, italics added.)

In *People v. Watson* (2000) 22 Cal.4th 220 (*Watson*), the defendant argued *Barraza's* second guiding principle applied to the theft of a car during a car theft sting operation, requiring the trial court to give an entrapment instruction. (*Id.* at pp. 222, 224.) The court rejected the argument. (*Id.* at p. 223.)

The court explained that "*Barraza* involved communications directly between the law enforcement agent and the defendant. [Citation.] Normally, police conduct must be directed at a specific person or persons to constitute

entrapment. . . . [Citation.] Except perhaps in extreme circumstances, the second *Barraza* principle is limited to instances of individual, personal enticement, excluding communications made to the world at large. Merely providing people in general an opportunity to commit a crime is not an improper enticement or otherwise entrapment. '[T]he rule is clear that "ruses, stings, and decoys are permissible stratagems in the enforcement of criminal law, and they become invalid only when badgering or importuning takes place to an extent and degree that is likely to induce an otherwise law-abiding person to commit a crime." ' [Citation.]" (*Watson*, *supra*, 22 Cal.4th at p. 223.)

The court observed: "The sting operation in this case presents no evidence of entrapment, both because the police did not specifically intend it as a communication to [the] defendant personally, and because it did not actually guarantee anything, but merely conveyed the idea detection was unlikely. The police did nothing more than present to the general community a tempting opportunity to take the [car]. Some persons, obviously including [the] defendant, might have found the temptation hard to resist. But a person who steals when given the opportunity is an opportunistic thief, not a normally law-abiding person. . . . [The d]efendant presented no evidence of any personal contact whatever between police and himself; certainly he could not show that the police cajoled him, gave him any enticement or guarantee, or even knew or cared who he was." (*Watson*, *supra*, 22 Cal4th at p. 224, italics omitted.)

We review a relevance ruling for abuse of discretion. (*People v. Powell* (2018) 6 Cal.5th 136, 162.) "The court's ruling will not be disturbed unless made 'in an arbitrary, capricious, or

patently absurd manner that resulted in a manifest miscarriage of justice.' [Citation.]" (*Ibid.*) "[A] 'miscarriage of justice' should be declared only when the court, 'after an examination of the entire cause, including the evidence,' is of the 'opinion' that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

2. *Application of the Law to this Case*

The question here is whether the evidence Lavergne possessed the methamphetamine pipe and a small amount of methamphetamine was relevant to show her "willing and active participation in the" selling, transporting, or offering to sell a controlled substance, "for which she was on trial." (*Allison, supra*, 120 Cal.App.3d at p. 275.) We conclude it was not.

Under *Barraza*, relevant evidence as to the defendant's willingness to participate in a crime might include "the transactions preceding the offense, the suspect's response to the inducements of the officer, the gravity of the crime, and the difficulty of detecting instances of its commission." (*Barraza*, *supra,* 23 Cal.3d at p. 690.) Character evidence, such as predisposition to commit an offense, is irrelevant and thus inadmissible. (*Id.* at pp. 690-691; see Evid. Code, § 350.)

As previously noted, in *Allison*, the statements at issue "were all made for the obvious purpose of inducing the agents to go ahead with the cocaine purchase. . . . These statements, showing as they did [the] defendant's *willing and active participation* in the drug transaction for which she was on trial, were admissible on the issue of entrapment." (*Allison*, *supra*, 120 Cal.App.3d at pp. 274-275, italics added.)

Here, by contrast, Lavergne made no reference to the methamphetamine or pipe in an attempt to convince Logrecco to proceed with purchasing the codeine pills. Indeed, Logrecco only became aware of the methamphetamine and pipe after he identified himself as a law enforcement officer and searched Lavergne's vehicle. Lavergne, moreover, pleaded no contest to possessing the methamphetamine and pipe so evidence of any such possession was not otherwise relevant to the case-in-chief of any charge that went to the jury. Evidence of Lavergne's possession of the methamphetamine and pipe could thus only have been relevant for a proposition that *Barraza* and *Allison* instruct has no place in an entrapment defense—a defendant's propensity to commit a crime.

The trial court, however, appears to have admitted the evidence precisely for that purpose when the trial court stated, to exclude the evidence "would give the jury . . . an inaccurate flattering light about the defendant." The trial court therefore abused its discretion in conditioning instruction as to the defense of entrapment on the admission of the evidence about the methamphetamine and pipe. (See *People v. Ghobrial* (2018) 5 Cal.5th 250, 283 [trial court has no discretion to admit irrelevant evidence].)

Lavergne contends admission of the methamphetamine and pipe was prejudicial because the prosecutor argued to the jury that it had to consider the totality of the circumstances, which included that Lavergne "had some things that were not things a normally law-abiding citizen should have." Because the evidence of entrapment was so weak, we conclude that the erroneous admission of the methamphetamine and pipe evidence was not prejudicial.

First, Logrecco's ad, to which Lavergne responded, was not directed at Lavergne; it was not designed to entice her personally. It was merely a communication to the world at large, presenting to the general community an opportunity to sell prescription pain medication. (*Watson*, *supra,* 22 Cal.4th at pp. 223-224.)

Second, once Lavergne responded to his ad, Logrecco merely told her that he was interested in purchasing the pills and the two of them arranged a meeting to complete the purchase. While Lavergne testified that she felt compassion for the author of the ad and contacted him for that reason, there was no evidence of anything Logrecco said or did beyond what was stated in the ad in order to elicit sympathy and thereby induce her to sell him the pills. (See *Barraza*, *supra*, 23 Cal.3d at p. 690.)

Moreover, on multiple occasions when Logrecco did not respond to text messages, Lavergne took the initiative to communicate. At one point, she even told him, "Well I take it you don't want them or you are a Cop." Lavergne never testified that Logrecco responded with references to his pain or other comments designed to appeal to her sympathies. (See *Barraza*, *supra*, 23 Cal.3d at pp. 689-690.)

For these reasons, we conclude that even if the trial court had excluded evidence of the methamphetamine and pipe, it is not reasonably probable the jury would have credited Lavergne's entrapment defense and acquitted her. Admission of the evidence did not result in a miscarriage of justice, and reversal is not required. (*People v. Powell*, *supra*, 6 Cal.5th at p. 162; *People v. Watson*, *supra*, 46 Cal.2d at p. 836.)

II. No Violation of Lavergne's Right to a Speedy Trial Occurred

A. *Factual and Procedural Background*

The crime took place in January 2015. The felony complaint was filed on April 15, 2015.[7] On May 15, 2015, the court called the case for arraignment and Lavergne was absent; the court issued an arrest warrant.[8] The probation officer's report reflects that police arrested Lavergne on that warrant on April 28, 2017. On May 1, 2017, Lavergne waived arraignment and pleaded not guilty, and the court recalled the warrant and released her on her own recognizance. In September 2017, Lavergne's preliminary hearing took place, and the People filed the information.

In January 2018, Lavergne filed a motion to dismiss the charges in this case, in part on the ground that undue delay in prosecution from the time the arrest warrant was issued to the time she was arraigned violated her right to a speedy trial. The motion contained no declaration from Lavergne but contained one from defense counsel. It stated that, as a result of the delay, Lavergne suffered the following prejudice: "Defense does not have access to internet or phone records from the time of the offense to establish whether the communications alleged were actually sent by the defendant."

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[7] A declaration from Lavergne's trial counsel erroneously states that the felony complaint was filed on February 25, 2015.

[8] We take judicial notice of the felony complaint and May 15, 2015 minute order in the superior court file in this case. (Evid. Code, §§ 452, subd. (d)(1), 455, subd. (a), 459, subds. (a), (c).)

At the March 2018 hearing on Lavergne's motion, Lavergne's counsel argued that the delay was prejudicial, in that much of the case depended on conversations between Logrecco and Lavergne "that occurred either via [Craigslist] or text." Lavergne complained that she lacked access to "the devices she was using" at that time, and could not use them "to confirm the existence of those conversations."

Counsel also argued that the delay was unjustified: Logrecco released Lavergne at the scene and told her if there was a filing she would receive something. She received nothing and a warrant was issued without her knowledge. Counsel was unaware of any due diligence used by the prosecution or police to bring Lavergne to court. Counsel complained that "since the issuing of the warrant [on May 15, 2015], they did nothing to look for her." At one point, the court (Judge Yvette T. Sanchez) said that the court file contained a letter from the district attorney's office "indicating [for Lavergne] to show up May 15, same address the lady has used all over." The court also indicated it had seen nothing from Lavergne on the issue of prejudice.

Counsel responded that there was no indication the letters had been mailed or received, and Lavergne told counsel that Lavergne had not received them. Counsel also reiterated: "In the two years since the contact, [Lavergne] doesn't have access to any sort of electronic device she would have been using two years ago, so I don't have an opportunity to get proof that anything was sent from her or what was sent from her device. So that would be the prejudice."

The prosecutor responded that she had a printout of the ad and text messages; she believed defense counsel had them as well. She stated that Lavergne could have subpoenaed the phone

records and, to the extent identity was at issue, Logrecco could identify Lavergne in court. The court commented: "Because ultimately there is a face-to-face meeting." The prosecutor agreed, and the court added, "That's what this is about." The parties submitted the matter; the court denied Lavergne's motion to dismiss.

B. *Analysis*

Lavergne claims the delay "between the filing of the complaint and her arrest and arraignment" "prejudiced her ability to defend against the charges" and thus violated her state constitutional right to a speedy trial.[9] We reject the claim.

"The California Constitution guarantees criminal defendants the right to a speedy trial. (Cal. Const., art. I, § 15.)" (*People v. Lowe* (2007) 40 Cal.4th 937, 939.) "[T]he state constitutional right arises upon the filing of a felony complaint." (*Id*. at p. 942.) "The defense has the initial burden of showing prejudice from a delay in bringing the defendant to trial." (*Ibid*.) The defendant "must show that the delay has impaired the ability to defend against the charged crime because, for instance,

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[9] The People do not raise the issue of whether Lavergne, who failed to appear in court on May 15, 2015, thereby absconded and thus waived her right to a speedy trial. (See *People v. Perez* (1991) 229 Cal.App.3d 302, 308.) At the 2018 hearing on Lavergne's speedy trial motion, neither party raised the issue, although Lavergne's counsel effectively argued Lavergne had not absconded or done anything wrong. During the hearing, the trial court mentioned nothing about a possible waiver of her speedy trial right; the court's comments, before it ruled, focused on the lack of prejudice resulting from the delay. Accordingly, we do not address the question of waiver.

a witness has become unavailable, evidence has disappeared, or the memory of a potential witness has faded." (*Id.* at p. 946, fn. omitted.) "Once the defense satisfies this burden [of showing prejudice], the prosecution must show justification for the delay. If the prosecution does that, the trial court must balance the prejudice to the defendant resulting from the delay against the prosecution's justification for the delay." (*Id.* at p. 942.) "Only after [the defendant has demonstrated prejudice] must the court determine if the delay was justified and engage in the balancing process." (*Serna v. Superior Court* (1985) 40 Cal.3d 239, 249; accord, *People v. Jones* (2013) 57 Cal.4th 899, 921 ["if the defendant fails to meet his or her burden of showing prejudice, there is no need to determine whether the delay was justified"].)

"In evaluating the correctness of a trial court's denial of a defendant's speedy trial motion, we consider all evidence that was before the court at the time the trial court ruled on the motion." (*People v. Jones, supra,* 57 Cal.4th at p. 922.) We review the trial court's ruling for abuse of discretion. (Cf. *Dews v. Superior Court* (2014) 223 Cal.App.4th 660, 664.)

Lavergne argues she was prejudiced, in that the delay prevented her from accessing "telephone or related records she was using at the time of the offense" with the result she was unable to show (1) she texted Logrecco that she was in a white Honda, and (2) she never spoke to Logrecco by phone. According to her, this prevented her from demonstrating, via a suppression motion (Pen. Code, § 1538.5), that when Logrecco approached Lavergne's vehicle, he did not know the person who had been texting him was a woman in a black Tahoe. She maintains such a motion would have been successful because, at the time of that

approach, Logrecco lacked reasonable suspicion that the inherently innocuous bottle in the Tahoe contained contraband.

However, Lavergne's motion contained no declaration from her stating she did not have (1) the phone she used in January 2015, or (2) phone records pertaining to the text messages. Her counsel's declaration concerning access to phone records necessarily was not based on personal knowledge but, at best, on hearsay. Lavergne reasonably should have known in January 2015 that the text messages in her phone might be evidence and should have taken steps to preserve it. After her arrest, she could have subpoenaed the phone records pertaining to the messages; she did not state whether she had attempted to do so or explained why this was not a viable alternative.

Lavergne did not assert in her written motion or at the hearing that there was any evidence the ad and/or text messages did not exist. Lavergne's counsel did not dispute the prosecutor's representation that Lavergne's counsel had a printout of the ad and text messages. Nor did Lavergne's counsel dispute the printout accurately reflected both.

Additionally, Lavergne made no showing before the trial court that the delay prejudiced her ability to bring a successful Penal Code section 1538.5 motion; she never advanced that specific argument during the hearing on the motion to dismiss. Lavergne thus failed to show prejudice, and the trial court did not abuse its discretion by denying her motion to dismiss the charges on speedy trial grounds.

III. The Trial Court Did Not Err in Denying Lavergne's Suppression Motion

Lavergne filed a Penal Code section 1583.5 motion to suppress the pills, pipe, and methamphetamine. The court denied it. Lavergne claims the denial was error. We conclude otherwise.

A. *The Codeine Pills*

In her opening brief, Lavergne simply states that she "was prejudiced by the unreasonable delay in bringing her to trial because she lacked access to the information necessary to challenge the reasonableness of the seizure of the pills from her vehicle." She then turns to the question whether the trial court erred in denying her motion as to the pipe and methamphetamine, "[a]ssuming for purposes of argument that the discovery of the pills was permissible."

" '[I]t is appellant's burden to affirmatively show error. [Citation.] To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.]' [Citation.]" (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1457; see Cal. Rules of Court, rules 8.204(a)(1)(C) & 8.360(a).) Lavergne cites no suppression hearing evidence or legal authority to support a claim that the trial court erred in denying her suppression motion as to the pills. Accordingly, this claim of error is forfeited. (*People v. Flint* (2018) 22 Cal.App.5th 983, 995, fn. 11; *People v. Johnigan* (2011) 196 Cal.App.4th 1084, 1097-1098.)

B. *The Pipe and Methamphetamine*

In her opening brief, Laverne contended that the trial court should have suppressed the pipe and methamphetamine because their seizure was not justified by the search-incident-to-arrest exception or the automobile exception to the warrant requirement. In response, the People cited authorities for the proposition that the searches of Lavergne's vehicle were justified under the automobile exception to the warrant requirement. Lavergne thereafter conceded in her reply brief: "Having considered the [People's] brief and the authorities cited therein, [Lavergne] abandons her argument that there were independent grounds to exclude the pipe and methamphetamine."

Lavergne's remaining argument is that, "[i]f her motion to suppress the codeine had been properly granted, the pipe and methamphetamine would have been excluded as fruits of the poisonous tree." Having failed to demonstrate that the trial court erred in denying her suppression motion as to the codeine pills, her claim of error as to the pipe and methamphetamine similarly fails. (See *People v. Flint*, *supra*, 22 Cal.App.5th at p. 995, fn. 11.)

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.